

D/L
Item No. 03
22.02.2024
KOLE

**MAT 118 of 2024
With
IA CAN 1 of 2024**

**Sri Ayan Kumar Saha
-Vs.-
The Kolkata Municipal Corporation & Ors.**

*Mr. Tanmoy Mukherjee,
Mr. Iresh Paul,
Mr. K. R. Ahmed,
Mr. R. Das,
Mr. G. Kayal,*

...for the appellant.

*Mr. Biswajit Mukherjee,
Mr. D. Mondal,*

...for the KMC.

*Mr. Anindya Bose,
Mr. Amit Gupta,
Mr. S. Alam,
Ms. Amrita Chowdhury,*

...for the respondent nos. 6, 7 and 8.

By consent of the parties, the appeal and the connected application are taken up for hearing together.

The subject matter of challenge in this appeal is a judgment and order dated December 19, 2023, whereby the appellant's writ petition being WPA 22750 of 2023 was disposed of by a learned Judge of this Court.

The writ petitioner apparently approached the learned Single Judge complaining of illegal and unauthorized construction at the instance of the private respondents in the writ petition who are also the private respondents in the appeal, at premises No. 8B, Haralal Das Lane, Ward No. 21, Borough IV, Kolkata Municipal Corporation (in short 'KMC'). The grievance apparently was that the construction is being made without leaving the mandatory side open space. The writ petitioner was

aggrieved by the inaction on the part of KMC in spite of complaint having been lodged with KMC.

The learned Advocate for the private respondents submitted that the concerned construction was being made strictly adhering to the sanctioned plan.

On behalf of KMC, it was submitted that inspection had revealed unauthorized construction, in violation of the sanctioned plan. Stop work notice under Section 401 of the KMC Act, 1980 was issued to the private respondents on September 8, 2023, with intimation to the local police station. The case file has been placed before the Competent Authority for processing the same under the suitable sub-Section of Section 400 of the KMC Act, 1980.

Recording the aforesaid submissions, the learned Single Judge disposed of the writ petition with the following observations and directions:-

“As it appears that the Corporation has already detected unauthorized construction and has also initiated proceeding to deal with the same, accordingly, the Executive Engineer (Civil)/building, Borough IV and V is directed to take prompt necessary steps to conclude the said proceeding in accordance with law at the earliest but positively within a period of twelve weeks from the date of communication of this order.

As unauthorized construction has been detected, the private respondents are restrained from raising any further construction till the matter is finally decided by the Corporation.”

The writ petitioner has come up in appeal against the said order.

Mr. Tanmoy Mukherjee, learned Advocate for the appellant/writ petitioner says that although apparently the order seems to be in favour of the writ petitioner, the grievance of the writ petitioner was not only that construction was being made in deviation from the sanctioned plan. The fundamental grievance is that sanction could not have been granted at all by KMC and the private respondents induced KMC to grant such sanction by making misrepresentation or by suppressing material facts. A representation dated September 13, 2023 has been made to the Executive Engineer, Borough IV/V, Building, KMC ventilating the aforesaid grievance and seeking initiation of proceedings for cancellation of the building plan sanctioned in favour of the private respondents. No action has been taken on the basis of such representation.

Mr. Biswajit Mukherjee, learned Advocate representing KMC as also Mr. Anindya Bose, learned Advocate representing the private respondents say that this was not the case of the writ petitioner before the learned Single Judge. They drew our attention to the writ petition and the prayers therein.

Learned Advocate for the appellant, however, says that prayer (a) of the writ petition also is a direction on the Municipal Authorities to initiate action under Section 397 of the KMC Act.

Be that as it may, we see no apparent infirmity in the order of the learned Single Judge and we do not interfere with the same.

However, since a representation has been made by the appellant to the Municipal Authorities for initiation of proceedings under Section 397 of the KMC Act, 1980, we are of the view that such representation should be disposed of by KMC in accordance with law, observing the principles of natural justice.

Accordingly, we direct the Municipal Commissioner being the respondent no. 2 or any Competent Officer nominated and authorized by him to dispose of the appellant's representation dated September 13, 2023 (page 85 of the stay application) by a reasoned order, in accordance with law, within a period of eight weeks from the date of communication of this order by the appellant to the Municipal Commissioner after affording due opportunity of hearing to both the appellant and any one of the private respondents or their authorized representatives. Further action may be taken by the Municipal Authorities depending on the order that is passed on the aforesaid representation. If the concerned officer deems it necessary, an inspection of the impugned construction may be held by him and in that event parties shall cooperate with him. Such inspection will be held upon prior notice to the parties.

Since the learned Single Judge has directed completion of the proceedings under Section 400 that is contemplated by KMC, it is desirable that the officer who conducts the proceedings under the relevant provision of Section 400 and the officer who disposes of the representation of the appellant mentioned in this order, is

the same person so that there is no chance of conflict of decisions.

Since we have not called for affidavits, the allegations made in the stay application, are deemed not to be admitted by the respondents.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)